

UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF IOWA

IN RE:

BRIAN J. HANSEN AND  
JENNIFER A. HANSEN;

Debtors.

744 12<sup>th</sup> Avenue NE  
Hampton, IA 50441

xxx-xx-9077

Case No. 15-01639

OBJECTION TO DEBTORS'  
CHAPTER 13 PLAN

COMES NOW, James R. Harmeyer, Inc. d/b/a/ Tyler Homes, (hereinafter "Tyler Homes") by and through undersigned counsel, and for their Objection to Debtors' Chapter 13 Plan, hereby state the following:

1. Tyler Homes entered into a contract with Brian and Jennifer Hansen (the debtors) on May 27, 2010 to construct the debtors' new home located at 744 12<sup>th</sup> Avenue Northeast in Hampton, Iowa.
2. Change orders were made and the contract price increased to a total of \$729,130.96.
3. The debtors' took possession of their new home on April 1, 2011 with a balance due to Tyler Homes; subsequently, a payment was made but still left a remaining balance of \$22, 579.32.
4. The contract provided for an 18 percent annual interest rate for unpaid amounts, \$5,000 in liquidated damages, and reasonable attorney fees.

5. On June 19, 2012, Tyler Homes filed a mechanic's lien against the debtors' property.
6. On August 6, 2012, Tyler Homes, through the undersigned counsel, filed a Petition to Foreclose Mechanic's Lien in the District Court for Franklin County, the ensuing lawsuit was docketed as Equity No. EQCV500977.
7. On August 17, 2015, the District Court issued its "Findings of Fact, Conclusions of Law and Ruling" in favor of Tyler Homes and ordering foreclosure on the mechanic's lien held by Tyler Homes and entering judgment with interest at the contract rate of 18% annually, \$5,000 in liquidated damages, and Tyler Homes was awarded \$50,471.35 in attorney fees.
8. On November 25, 2015, debtors filed a Chapter 13 Voluntary Petition.
9. The initiation of this action included additional filings such as the debtors' income records and Form 22C-1.
10. Pursuant to the calculations reflected on Form 22C-1, the debtors are above the median family income for the state of Iowa therefore the debtors must provide for payments over a 60 month period in accordance with 11 U.S.C. Section 1322(d) and 1325(b).
11. Debtors' proposed Chapter 13 Plan only provides a three year commitment period and because debtors' financial information shows them to be above-median, the Plan is illegal and in direct violation of 11 U.S.C. §§ 1322(d) and 1325(b). *See In Re Martin*, 464 B.R. 798 (Bank. C.D. Ill. 2012).

12. Debtors' properly list Tyler Homes' Judgment Lien as a secured claim in its Petition, on "Schedule D -Creditor Holding Secured Claims" naming James R. Harmeyer, Inc. d/b/a Tyler Homes as a secured creditor with an asserted combined claim of \$78,050.67, however the full amount of the secured debt is \$97,334.32 as claimed and supported in Objector's Proof of Claim filed contemporaneous herewith.
13. Tyler Homes, as a secured creditor, objects to debtors' Chapter 13 Plan which fails to pay 100% of the allowed secured claim and Tyler Homes challenges the Chapter 13 Plan's treatment of Tyler Homes' secured creditor's claim as general unsecured debt .
14. To the extent Tyler Homes' claim is subject to 11 U.S.C. §1325(a)(5)(B)(ii), Tyler Homes objects to the Chapter 13 Plan for failure to provide for continued payments on secured debt, improperly classifying secured debt as unsecured, and underestimating the amount of arrearage on a secured debt on property which the debtors seek to keep.
15. Tyler Homes also objects to debtors' asserted security valuation of Tyler Homes' secured claim and moves for recalculation of the lien in favor of Tyler Homes under 11 U.S.C. § 506(a).
16. To the extent Tyler Homes' claim is limited by 11 U.S.C. §1325(a)(5)(B)(ii), Tyler Homes objects to the Chapter 13 Plan for failure to provide for continued payments of any unsecured portion of Objector's secured claim on a pro rata basis in accordance with 11 U.S.C. § 1325(a)(4).

17. Under 11 U.S.C. § 506(a)(1), Tyler Homes' mechanic's lien constitutes a secured debt which debtors must pay if they intend to retain the underlying property.
18. Debtors' Petition in Schedule D – Creditors Holding Secured Claims identifies the property subject to Tyler Homes' lien as debtors' personal residence at 744 12<sup>th</sup> Avenue NE, Hampton, Iowa 50441 and debtors have arbitrarily alleged the property is valued at \$450,000.00 without an appraisal.
19. Debtors' Chapter 13 Plan lists debtors' assets including a homestead valued at \$550,000.00.
20. Tyler Homes objects to debtors' asserted collateral valuation and moves for recalculation and appraisal of the value of debtors' property subject to lien under 11 U.S.C. § 506(a).

WHEREFORE, James R. Harmeyer, Inc. d/b/a/ Tyler Homes, prays that the Court order debtors to amend their commitment period to five years, provide for 100% payment for Objector's secured claims, recalculate the allowed secured claim and the asserted collateral value, and adjust their plan accordingly.

Respectfully submitted,

SULLIVAN & WARD, P.C.

/s/ Amanda A. James

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ATTORNEY FOR JAMES R. HARMEYER, INC.

D/B/A TYLER HOMES

### CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above and foregoing Objection to Chapter 13 Plan was electronically mailed and/or mailed by United States mail, postage prepaid this 2nd day of February, 2016, to the persons listed below.

/s/ Amanda A. James

#### COPIES TO:

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